STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 11, 2011
v	No. 299175 Kalamazoo Circuit Court
PETER ALVIN KEATON, Defendant-Appellant.	LC No. 2010-000401-FH

Before: MARKEY, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals by right his jury trial conviction for operating/maintaining a laboratory involving methamphetamine, MCL 333.7401c(2)(f). Defendant was sentenced to 156 months to 30 years' imprisonment as an habitual offender, fourth offense, MCL 769.12. We affirm.

Defendant argues that there was insufficient evidence to support his conviction. We review de novo a challenge to the sufficiency of the evidence to determine in a light most favorable to the prosecution whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Malone*, 287 Mich App 648, 654; 792 NW2d 7 (2010). Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. The record reflects that defendant owned the vehicle that he was driving. In addition, the vehicle contained several items which were known to be used in the manufacture of methamphetamine. Officer Darien Smith of the Kalamazoo Township police department, who performed the traffic stop on defendant's vehicle, testified that lye, liquid drain cleaner, Coleman camp fuel, fertilizer spikes, glass bottles and coffee filters, all of which were found in defendant's vehicle, are used in manufacturing methamphetamine. Moreover, Officer Brett Hake, who was also with the Kalamazoo Township police department and who was with Officer Smith when the traffic stop was performed, testified that the items found in defendant's trunk comprised the makings of a

one-pot methamphetamine laboratory. Based on the foregoing, a rational trier of fact could conclude, using reasonable inferences, that defendant owned or possessed a motor vehicle or chemical or laboratory equipment that he knew or had reason to know was to be used for manufacturing methamphetamine. *Malone*, 287 Mich App at 654.

Defendant argues that because there was no trace amount of methamphetamine found in defendant's trunk, and not all of the chemicals associated with making methamphetamine were found in defendant's trunk, the evidence was insufficient to convict defendant of operating/maintaining a laboratory involving methamphetamine components. Defendant's argument contradicts the plain language of MCL 333.7401c(1). Importantly, statutes should be interpreted according to their plain and ordinary meaning, *People v Bell*, 276 Mich App 342, 345; 741 NW2d 57 (2007), and nowhere in MCL 333.7401c(1) does the Legislature indicate that a defendant must possess all of the components used in the manufacture of methamphetamine to be convicted of operating/maintaining a laboratory involving methamphetamine. Rather, the statute prohibits the ownership or possession of "*any* chemical or *any* laboratory equipment" that the owner or possessor knows or has reason to know is to be used for the purpose of manufacturing a controlled substance. MCL 333.7401c(1)(b) (emphasis added). The term "any" is commonly understood to mean "one, a, an, or some; one or more . . . ." *Random House Webster's College Dictionary* (1997). Nothing will be read into a clear statute, which courts must enforce as written. *Malone*, 287 Mich App at 654-655. Accordingly, the fact that a few necessary items for the manufacture of methamphetamine were missing does not preclude the fact finder from determining that the essential elements of the crime were proved beyond a reasonable doubt. "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Defendant need only possess a sufficient number of the necessary components of manufacturing to allow a reasonable inference that the components were possessed for the purpose of manufacturing a controlled substance – as he did in this case.

Defendant next argues that the trial court erred when it allowed Officer Smith to testify that defendant had prior contact with the Kalamazoo Valley Enforcement Team (KVET), which involved defendant's making a video of the one-pot method of manufacturing methamphetamine. Defendant specifically argues that the admission of this evidence violated the trial court's prior ruling that excluded such evidence. In addition, defendant argues that the admission of the evidence violated MRE 403 because the evidence was confusing and prejudicial and MRE 404(b) because it was propensity evidence. A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion but underlying issues of law are reviewed de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

The record reveals that the trial court ruled that defendant's statement that he made a one-pot method video for KVET was admissible. Thus, contrary to defendant's argument, Officer Smith's testimony that defendant indicated to him that he knew how to make the one-pot method, and in fact, he "made the 30-minute one-pot training video" for KVET, did not violate the trial court's ruling. In addition, MRE 404(b) does not govern the admissibility of defendant's statement to Officer Smith. *People v Rushlow*, 179 Mich App 172, 176; 445 NW2d 222 (1989). "[A] prior statement does not constitute a prior bad act coming under MRE 404(b) because it is just that, a prior statement and not a prior bad act." *Rushlow*, 179 Mich App at 176, citing

People v Goddard, 429 Mich 505, 518; 418 NW2d 881 (1988). Further, the fact that defendant told Officer Smith that he made the one-pot method video for KVET was relevant because it tended to show that defendant knew how to make methamphetamine, creating an inference that defendant's having most of the ingredients for making methamphetamine in his vehicle was not coincidental. MRE 401. Thus, this evidence made it more probable that defendant had these items in his vehicle for the purpose of operating or maintaining a laboratory involving methamphetamine. MRE 401. Further still, the probative value of this evidence was not "substantially outweighed by the danger of unfair prejudice" or confusion of the issues, MRE 403, because the evidence directly established that defendant knew how to make methamphetamine and, thus, knew the significance of the components that were in his vehicle. Accordingly, the trial court did not abuse its discretion when it allowed the admission of defendant's statement to Officer Smith that defendant made the one-pot method video for KVET. *Lukity*, 460 Mich at 488.

Defendant next argues that Officers Smith and Hake were never recognized as experts by the trial court to testify that, in their opinion, the items found in defendant's vehicle were parts of a methamphetamine laboratory. Thus, according to defendant, the trial court erred by allowing the officers to testify as both fact and expert witnesses without giving the jury a cautionary instruction regarding the officers' dual roles. Defendant argues, citing *United States v Lopez-Medina*, 461 F3d 724, 742-745 (CA 6, 2006), that in the absence of such an instruction, he was deprived of a fair trial. We review unpreserved evidentiary issues and jury instructions for plain error affecting defendant's substantial rights. *Carines*, 460 Mich at 763.

The testimony of Officers Smith and Hake was based on their personal knowledge, training, and experience as police officers relating to methamphetamine laboratories and their components. See *People v Oliver*, 170 Mich App 38, 50-51; 427 NW2d 898 (1988), mod on other gds 433 Mich 862 (1989), wherein the police officers were experienced in viewing cars which were dented by bullets as part of their jobs as police officers, and the Court found that their testimony concerning the significance of certain vehicle dents constituted lay testimony. Officers Smith and Hake's opinions that the components found in defendant's vehicle were consistent with a methamphetamine laboratory were rationally based on their perceptions as police officers who deal with methamphetamine laboratories and components as part of their job. MRE 701. Although Officers Smith and Hake's testimony included some scientific, technical or other specialized knowledge, their testimony "was not overly dependent upon scientific, technical or other specialized knowledge." *Oliver*, 170 Mich App at 50 (citation omitted). Further, the officers' testimony was helpful for a clear understanding about why finding those items in a vehicle should result in a conclusion that a methamphetamine laboratory was being maintained or operated. MRE 701. Thus, the trial court correctly admitted Officers Smith and Hake's lay opinion testimony, so there was no need for a cautionary instruction and no plain error in this case. *Carines*, 460 Mich at 763.

Finally, defendant's related claim of trial counsel's ineffectiveness also fails. Defense counsel was not ineffective for failing to request a cautionary instruction regarding the officer's

testimony because such a request by defense counsel would have been futile. *People v Milstead*, 250 Mich App 391, 401; 648 NW2d 648 (2002).

We affirm.

/s/ Jane E. Markey
/s/ Deborah A. Servitto
/s/ Amy Ronayne Krause